SUPREME COURT, U. S.

FILED

OCT 19 1967

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 742

STATE OF MARYLAND, ET AL.,
Appellants,

v.

W. WILLARD WIRTZ,
SECRETARY OF LABOR, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JURISDICTIONAL STATEMENT

FRANCIS B. BURCH,
Attorney General
of Maryland,

THOMAS A. GARLAND,
LORING E. HAWES,
ALAN M. WILNER,

CRAWFORD C. MARTIN,
Attorney General of Texas,

GEORGE COWDEN,
A. J. CARUBBI, JR.,
HAWTHORNE PHILIPS,
CECIL MORGAN,

Counsel for Appellants.

One Charles Center
Baltimore, Maryland

The Daily Record Co., Baltimore, Md. 21203

INDEX

Table of Contents

	PAGE
Reference to Opinions Below	1
Grounds of Jurisdiction	2
Questions Presented	3
Statement of the Case	4
Substantiality of Questions Presented	5
Appendix A—Opinions of Court	1a
Judgment of Court	51a
Appendix B—Fair Labor Standards Act as amended in 1966	52a

Table of Citations

Cases

Ashton v. Cameron County, 298 U.S. 513	7
Hopkins Fed. S. & L. Asso. v. Cleary, 296 U.S. 315	7
Maryland v. Wirtz, 269 F. Supp. 826	1
McCulloch v. Maryland, 4 Wheat. 316	7
New York v. United States, 326 U.S. 572	6
Polish Nat. Alliance v. National Labor Rel. Bd., 322 U.S. 643	7
Radio Corp. of America v. United States, 95 F. Supp. 660, 341 U.S. 412, 71 S. Ct. 806, 95 L. Ed. 1062	2
Stafford v. Wallace, 258 U.S. 495, 42 S. Ct. 397, 66 L. Ed. 735	2
Texas v. White, 7 Wall. 700	6

Statutes

	PAGE
United States Code:	
Title 28—	
Section 1253	2
Section 1337	2
Section 2201	2
Section 2202	2
Section 2282	2, 4
Section 2284	2, 4
Title 29—	
Sections 201, et seq.	2, 3, 4
United States Constitution:	
Article I, Section 8	3, 4
Amendment X	3
Amendment XI	3

Miscellaneous

Rules of the Supreme Court, Rule 15	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. ------

STATE OF MARYLAND, ET AL.,
Appellants,

v.

W. WILLARD WIRTZ,
SECRETARY OF LABOR, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JURISDICTIONAL STATEMENT

Appellants, twenty-eight states of the United States, appeal from the judgment of the United States District Court for the District of Maryland denying their motion for summary judgment and prayers for interlocutory and permanent injunctive relief and dismissing their Complaint. This Statement is submitted pursuant to Rule 15 of the Rules of the Supreme Court to demonstrate that this Court has jurisdiction to consider the appeal, and that substantial federal questions are involved therein.

REFERENCE TO OPINIONS BELOW

The District Court rendered three separate Opinions in the case below, which are reported in 269 F. Supp. 826

(1967). A copy of said Opinions and a copy of the subsequent Order thereon are set forth in Appendix A, *infra*, pp. 1a-51a.

GROUNDS OF JURISDICTION

This action was originally instituted by the State of Maryland in the District Court for the District of Maryland pursuant to Title 28, U. S. Code, Sections 1337, 2201, 2202, 2282 and 2284 to declare the application of the Fair Labor Standards Act (Title 29, U. S. Code, Sections 201, *et seq.*) to employees of the State and its political subdivisions, as provided by Public Law 89-601, to be in violation of the United States Constitution and to enjoin the various defendants from so enforcing the Act. Twenty-seven other states and one school district subsequently joined Maryland as parties plaintiff. A three-judge court, convened pursuant to Title 28, U. S. Code, Sections 2282 and 2284, rendered three Opinions on June 13, 1967, two of which expressed a decision to deny the declaratory and injunctive relief requested by Appellants. On June 26, 1967, a final judgment was entered by the court in accordance with the said two Opinions, which denied the relief and dismissed the Complaint. A Notice of Appeal to this Court was filed in the United States District Court for the District of Maryland on August 24, 1967.

This is a direct appeal from the judgment of a three-judge District Court denying, after notice and hearing, a permanent injunction in a civil action required by Title 28, U. S. Code, Section 2282 to be heard by a three-judge court. This Court has jurisdiction to consider this appeal under Title 28, U. S. Code, Section 1253. *Radio Corp. of America v. United States* (D.C. Ill., 1950), 95 F. Supp. 660, *aff'd* 341 U.S. 412, 71 S. Ct. 806, 95 L. Ed. 1062; *Stafford v. Wallace* (1922), 258 U.S. 495, 42 S. Ct. 397, 66 L. Ed. 735.

The text of the Fair Labor Standards Act (Title 29, U. S. Code, Sections 201, *et seq.*), as amended by Public Law 89-601, is set forth in Appendix B, *infra*, pp. 52a-137a.

QUESTIONS PRESENTED

1. Did the Congress of the United States, in enacting Public Law 89-601, exceed its power to regulate interstate commerce granted under Article I, Section 8 of the United States Constitution, insofar as said Public Law 89-601 purports to extend the provisions of the Fair Labor Standards Act to the school systems and hospitals of the States and their political subdivisions?

2. Did the Congress of the United States, in enacting Public Law 89-601, infringe upon powers reserved to the States under Article X of the Amendments to the United States Constitution, insofar as Public Law 89-601 purports to extend the provisions of the Fair Labor Standards Act to the school systems and hospitals of the States and their political subdivisions?

3. Did the Congress of the United States, in enacting Public Law 89-601, authorize the violation of Article XI of the Amendments to the United States Constitution, insofar as said Public Law 89-601 purports to authorize actions by or on behalf of private citizens against the States in United States District Courts?

4. Under our dual system of government, does the Congress of the United States have the constitutional authority to regulate a State in the performance of its *necessary* governmental functions?

5. Does the Congress of the United States have the authority to require a State Legislature or the governing body of any political subdivision thereof to either levy and collect taxes for a particular purpose or curtail or discontinue necessary governmental services?

6. Does a State, in the performance of its necessary governmental functions, engage in commerce within the meaning of Article I, Section 8 of the Constitution of the United States?

7. Are state and local school systems and hospitals ultimate consumers within the meaning of Section 3(i) of Public Law 89-601 and, therefore, not subject to the provisions of said law?

STATEMENT OF THE CASE

Public Law 89-601, which became effective February 1, 1967, purports to extend the minimum wage and maximum hour provisions of the Fair Labor Standards Act (Title 29, U. S. Code, Sections 201, *et seq.*) to public elementary and secondary schools, institutions of higher education, and hospitals owned and operated by the States and/or their political subdivisions. The funds necessary to operate such schools, institutions and hospitals, and therefore to pay any increased wages occasioned by application of the Act, are required by the Constitutions of all of the Appellant States to be appropriated by their respective legislatures and funded by taxes levied by the same bodies. The direct effect of the Act, therefore, is to direct State Legislatures as to how much money to appropriate for the operation of agencies of the State government and, concomitantly, how much taxes to levy for the support of such agencies.

Appellants and Appellees filed motions for summary judgment (Appellees' motion being, in the alternative, a motion to dismiss) before a three-judge court convened under Title 28, U. S. Code, Sections 2282 and 2284. On June 13, 1967, the court rendered three Opinions as follows: (i) Judge Winter held the entire Act, as applied to the States and their subdivisions, to be constitutional; (ii) Judge Northrop held the entire Act, as so applied, to be

unconstitutional; and (iii) Judge Thomsen held the minimum wage provisions of the Act, as so applied, to be constitutional, but expressed doubt as to the constitutionality of the maximum hour provisions of the Act.

SUBSTANTIALITY OF QUESTIONS PRESENTED

The questions presented in this appeal relate directly to and will require a definition of one of the most important constitutional questions that this country has faced since 1787; that is, the nature of our federal system of government. What is the true constitutional relationship, in terms of political sovereignty, between the States and the Federal Government?

The questions presented to this Court involve essentially two issues: (1) are necessary State governmental functions, such as public education and public health services by the States subject to direct control by Congress merely because such activities may have in some way an effect on interstate commerce; and (2) if so, may Congress, under the guise of regulating interstate commerce, control these activities in such a way as to direct State Legislatures as to how much to tax, how much to appropriate, where to appropriate, or to direct State Executives as to what services will be performed by the State by controlling the wages and hours of its employees?

These questions ask whether the power to regulate commerce, plenary and broad though it is, is not constitutionally restricted to the extent that it cannot be exercised in a way which would materially infringe upon the political integrity of the States in areas of essentially local concern. The idea that the maintenance of effective State government imposes such a limitation has been expressed several times by this Court and was the basis upon which the Constitution was originally ratified.

In *Texas v. White* (1868), 7 Wall. 700, the Court noted:

> "The preservation of the states and the maintenance of their governments are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible union, composed of indestructible states."

With more particular reference to the type of situation involved here, Justices Douglas and Black stated in dissent in *New York v. United States* (1946), 326 U.S. 572, at page 574:

> "The notion that the sovereign position of the states must find its protection in the will of the transient majority of Congress is foreign to and in negation of our Constitutional System. There will often be vital regional interests represented by no majority in Congress. The Constitution was designed to keep the balance between the states and the nation outside the field of legislative controversy."

Later, the same Justices stated, in broader fashion:

> "The right of the states to administer their own affairs through their legislative, executive, and judicial departments, in their own manner through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal government from its organization. This carries with it an exemption of those agencies and instruments, from the taxing power of the Federal government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted."

There can be no doubt that a federal tax on state-operated public schools and hospitals could never be sustained. *New York v. United States, supra,* 326 U.S. 572, at pages 583, 587. This is because, in the words of John Marshall, the power

to tax involves the power to destroy. *McCulloch v. Maryland* (1819), 4 Wheat. 316. But the taxing power is not the exclusive weapon of destruction. The power to regulate commerce may also involve the power to destroy, and it, like other granted powers, may not be misapplied to destroy the political integrity of the states. See *Ashton v. Cameron County* (1936), 298 U.S. 513; *Hopkins Fed. S. & L. Asso. v. Cleary* (1935), 296 U.S. 315; and *Polish Nat. Alliance v. National Labor Rel. Bd.* (1944), 322 U.S. 643.

The question of specific Congressional regulation of State activities has been considered by this Court only in a limited and unrelated context. The cases have dealt with railroads, dock facilities, fish hatcheries, mineral waters, wheat and timber lands. It has never before been presented with such an assertion of direct and substantial federal control over traditional and indispensable activities of State government. Should this Court affirm the decision of the District Court, it would appear that whatever political power, sovereignty or integrity is possessed by the States exists only at the sufferance of Congress and may be withdrawn at its will. It is essential that the Supreme Court of the United States speak on such a monumental question, and of the greatest urgency that the States have a full opportunity to brief and argue this cause which is so basic to the structure of our Federal system of government.

Respectfully submitted,

FRANCIS B. BURCH,
Attorney General
of Maryland,

THOMAS A. GARLAND,
LORING E. HAWES,
ALAN M. WILNER,

CRAWFORD C. MARTIN,
Attorney General of Texas,

GEORGE COWDEN,
A. J. CARUBBI, JR.,
HAWTHORNE PHILIPS,
CECIL MORGAN,

Counsel for Appellants.

One Charles Center
Baltimore, Maryland